

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Smartmatic USA Corp.; ) File No. 22-cv-98  
Smartmatic International ) (JMB-JFD)  
Holding B.V.; and SGO )  
Corporation Limited, )  
Plaintiffs, ) St. Paul, Minnesota  
vs. ) August 29, 2024  
Michael J. Lindell and My )  
Pillow, Inc., )  
Defendants. )

BEFORE THE HONORABLE JOHN F. DOCHERTY  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(MOTION HEARING VIA ZOOM)

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

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1                   **P R O C E E D I N G S**2                   **IN OPEN COURT**

3  
4                   THE COURT: Good afternoon, everybody. This is  
5 Magistrate Judge Docherty. We are here this afternoon for a  
6 hearing on the plaintiffs' -- or excuse me -- the  
7 defendants' motion for leave to file a motion to compel.  
8 Let's begin with appearances, please, beginning with counsel  
9 for the plaintiff.

10                  MR. BEDELL: This is James Bedell on behalf of  
11 Smartmatic.

12                  THE COURT: Okay. And for the defense?

13                  MR. BEDELL: Oh --

14                  MR. FREY: I'm sorry, Your Honor. Timothy Frey  
15 also on behalf of Smartmatic.

16                  THE COURT: Okay.

17                  MR. KACHOUROFF: Christopher Kachouroff for  
18 Michael Lindell and My Pillow, Inc.

19                  THE COURT: Well, Mr. Kachouroff, this is your  
20 motion, so I think you'll lead us off.

21                  My first question, I want to get straight what  
22 we're here about. You filed a motion for leave to file a  
23 motion to compel, and it looks to me like a motion to compel  
24 has already been filed at Docket Number 335. Is this motion  
25 for leave related to 335, or is it something different?

1                   MR. KACHOUROFF: It is, Your Honor. The clerk  
2 called me and asked me to refile the -- because I filed the  
3 motion to compel as an exhibit to the motion for leave, and  
4 they asked me to refile it as a separate standalone  
5 document.

6                   THE COURT: Okay. Mr. Kachouroff, I don't know if  
7 other people are having this, but I'm -- you're very quiet.  
8 Your volume is very quiet.

9                   MR. KACHOUROFF: Okay. I don't know if that makes  
10 any difference. I'll try to speak up, Your Honor.

11                  THE COURT: Erin, can you hear all right?

12                  THE COURT REPORTER: (Nods head.)

13                  THE COURT: The court reporter indicates it's all  
14 right. So that's the most important person so we'll go  
15 ahead.

16                  So, Mr. Kachouroff, it looks like there was, way  
17 back when, a deadline for filing nondispositive motions of  
18 the 11th of June. Then on the 10th of June, Docket  
19 Number 280, that was extended to the 9th of July. You  
20 indicate that you thought you had until August 6th because  
21 that was 14 days before the hearing date, but you didn't  
22 meet that deadline either.

23                  So in -- just brief, what entitlement to relief do  
24 you have in this sort of situation where even the deadline  
25 that you are saying -- the later deadline that you are

1 saying you thought you had time to file, you didn't meet?

2 MR. KACHOUROFF: As indicated in my pleadings,  
3 when I spoke with opposing counsel, they claimed that the  
4 deadline was on July the 9th. I did not understand it to be  
5 July the 9th. I understood it to be the August 6th date.

6 However, I accepted what they have said because  
7 it -- their position seemed reasonable. And then  
8 immediately that same day, the Court -- or the next day the  
9 Court filed a document -- our own order stating that since I  
10 had not filed by August the 6th, which was my original  
11 interpretation -- meaning that the Court interpreted the  
12 requirement the same way that I did -- that I then took  
13 action because I felt that -- I did not realize that I  
14 was -- the Court viewed it the same way that I did. I  
15 thought maybe I missed something in the local rules, that  
16 the local rules didn't supplant the scheduling order, and I  
17 thought that there was a conflict.

18 So because the Court had also concluded as I did  
19 that I could file by the 6th, I decided to refile it and  
20 decided that I was not, in fact, late as the plaintiffs'  
21 contended. So had I known, of course, I would have filed on  
22 July 9th. But July 9th is a troublesome date. It's a  
23 troublesome date for many reasons, which -- some of the  
24 things that they raise in their motions here, that the  
25 cutoff for expert witnesses was on July 9th, but so was fact

1 witness discovery. So I ended up getting a bunch of fact  
2 witness discovery from the plaintiffs that my experts didn't  
3 have time to absorb or even incorporate.

4 So that is the July 9th day. Yes, they did file  
5 their motion by that date, but I didn't think that that was  
6 a deadline for that particular motion. So that would be my  
7 answer, Your Honor.

8 THE COURT: All right. All right. So what is the  
9 standard here? Because there's a local rule on extension  
10 of -- or modification of a scheduling order. That's Local  
11 Rule 16.3, but you're relying on Rule 6. It's not clear to  
12 me which of the two the plaintiffs are relying on. I'll ask  
13 them about that when they're up. What's the standard here?

14 MR. KACHOUROFF: I believe, Judge, the standard  
15 should be -- I would argue it should be a commonsense  
16 standard, which is what the rules seek from the Court, from  
17 the parties, whether it's under Rule 6 or Rule 16. If you  
18 want to proceed under the failed to act because of excusable  
19 neglect standard, well, yes, I think we have met that  
20 standard when even the Court itself assumed that the  
21 deadline was what we thought it was, which is why we filed  
22 belatedly.

23 I think we've shown good cause for that -- for  
24 that filing. So that's my answer to the Court is I think  
25 that we were to do -- we're to read the rules reasonably, I

1 don't think this is a particularly dispositive standard;  
2 meaning under Rule 6 or Rule 16, I have to pick one because  
3 I won't meet one or the other. I think I can meet both.

4 THE COURT: All right. I guess I -- will it be  
5 Mr. Bedell or will it be Mr. Frey who is speaking for  
6 Smartmatic on this issue?

7 MR. BEDELL: Your Honor, I will be speaking on the  
8 motion for leave, but Mr. Frey is prepared to speak on the  
9 underlying motion to compel, if you're feeling so inclined  
10 to hear argument on that as well.

11 THE COURT: Well, let me ask you this: There was  
12 a hearing put on the calendar for a nondispositive motion.  
13 Your view was that July 9th was the date to file  
14 nondispositive motions. Despite this being put on the  
15 calendar, nothing was -- nothing was ever said. Did you  
16 sleep on your rights here?

17 MR. BEDELL: Um --

18 THE COURT: You --

19 MR. BEDELL: I'm sorry.

20                   THE COURT: Well, what I'm saying is this: There  
21 was a hearing date put on the calendar for a nondispositive  
22 motion. Your view is that nondispositive motions were due  
23 on the 9th of July.

24 MR. BEDELL: Correct.

25 THE COURT: This hearing was put on the calendar

1 after the 9th of July. Why did you not say something about,  
2 hey, I -- you can't be having this motion because -- this  
3 motion hearing because no motion has been filed to go along  
4 with the hearing?

5 MR. BEDELL: So, Your Honor, on that, that was  
6 on -- apologies. I don't know if you can hear, but there's  
7 an air show in Cleveland at the moment, and so there are --

8 THE COURT: I can't hear it.

9 MR. BEDELL: There are fighter jets outside that  
10 are making it hard for me to hear, so I apologize for that.

11 THE COURT: Go ahead.

12 MR. BEDELL: But that was the -- the hearing for  
13 today was set on our motion date. That was at the July 9th  
14 hearing where we briefly addressed this issue as  
15 Mr. Kachouroff was filing some motions. As you are maybe  
16 aware, Your Honor, the motion for leave was originally filed  
17 on August 7th. And so we had the already scheduled motion  
18 on August 9th where we discussed this, and it's my  
19 understanding that it's at that hearing where you told  
20 Mr. Kachouroff to get this on so that he could have his  
21 hearing. And so we felt that since that was your order, we  
22 weren't necessarily going to say that he couldn't be heard  
23 on this issue.

24 But I think that does raise a good point about the  
25 thrust of our argument here, which is not necessarily that

1 he can't be heard on the motion. It's that he cannot meet  
2 the standard. And when we talk about the July 9th deadline  
3 and whether or not leave should be required, the standard  
4 changes because he's been requesting it after July 9th. And  
5 that's where he must show -- where he must show an excusable  
6 neglect and under these circumstances cannot.

7 THE COURT: All right. Anything further from  
8 either party on the motion for leave itself rather than on  
9 the underlying motion? I mean, I've read the briefs -- or  
10 the memos. It is not, I don't think, a terribly complicated  
11 issue. I'm not suggesting that we need to talk about it for  
12 an hour, but I do want -- but this has been brief, and I do  
13 want to make sure that everybody has said everything that  
14 they wanted to say and brought my attention to everything  
15 they want to bring my attention to.

16 MR. KACHOUROFF: I would say to the Court that if  
17 the Court has no further questions, I would submit on the  
18 papers and what we just talked about.

19 THE COURT: Okay. Mr. Bedell?

20 MR. BEDELL: Your Honor, I would just go on to say  
21 that in addition to what we've said in our papers, we're now  
22 sitting here 51 days from the July 9th deadline. We read  
23 the rules very -- you know, we read the rules to say that  
24 the dispositive motion deadline is July 9. When we filed  
25 our hearing -- when we scheduled our hearing on our own

1 affirmative motion to compel that was held on the 20th, we  
2 knew that because the local rule says at least 14 days prior  
3 to the hearing it must be filed. The only way to read that  
4 in harmony between your scheduling order and the local rules  
5 would be to file that on July 9, and so that's what we did  
6 on our end.

7 We're now 51 days, and so it's just another delay.  
8 And we're really concerned about our ability to bring this  
9 to trial quickly. There have already been some delays for  
10 various reasons, and it's becoming a point where it's  
11 prejudicing our client in order to wait longer for things  
12 that -- from what I have heard today do not show excusable  
13 neglect. His papers don't give a reason at all as to why he  
14 was unable to file such a motion on July 9th. And from what  
15 we're hearing today, I don't see how the excusable neglect  
16 standard could be met.

17 THE COURT: All right.

18 MR. KACHOUROFF: May I briefly address that?

19 THE COURT: Yes.

20 MR. KACHOUROFF: First of all, the 51 days is an  
21 exaggeration, and the delays and the prejudice to the  
22 plaintiffs is a gross exaggeration. One of the things that  
23 the plaintiffs keep harping on is the trial-ready date. The  
24 trial-ready date is a wholly illusory calendar date. It's a  
25 date that we want to have things finished by, a finish-by

1 date, and that the Court can schedule.

2 One of the things that I did, per the Court's last  
3 instruction to us, we sat down together by a phone call and  
4 we were able to talk to each other and I said to Mr. Frey --  
5 and Mr. Frey and, I think, Ms. Loftus agree -- that we would  
6 contact the Court, the District Court, to attempt to  
7 schedule a trial date as soon as possible.

8 But in this case, they are asking for hundreds of  
9 millions of dollars. We're not asking for -- an extra 30,  
10 40, 60 days is not going to impact their case at all. If  
11 the trial-ready date is to be January 2025 and we have these  
12 things done now, it's certainly not going to prejudice them  
13 at all moving forward.

14 And in terms of the excusable neglect, well,  
15 again, I point out to the Court what we talked about in our  
16 pleadings. Even the Court assumed that it's -- that the  
17 date was going to be August the 6th. And with that, I would  
18 submit.

19 THE COURT: All right. All right. I'll ask you  
20 to just stand by for a couple of minutes and I will be right  
21 back. Thank you.

22 (Recess taken at 2:21 p.m.)

23 \* \* \* \*

24 (2:27 p.m.)

25

1                   **IN OPEN COURT**

2  
3                   THE COURT: All right. If we are ready, let's --  
4                   let's resume here.

5                   So with respect to Mr. Kachouroff, I do not agree  
6                   with his indication that the Court was also confused about  
7                   the deadlines in this case. And let me explain what I mean  
8                   by that.

9                   There are two deadlines here. Any motion to be  
10                  heard on August 20th had to be filed by August the 6th  
11                  because that's 14 days in advance. Any nondispositive  
12                  motion dealing with fact discovery had to be filed by July  
13                  the 9th because that is what Docket Number 280 explicitly  
14                  says. It says that the pretrial scheduling order is  
15                  amended, and it extends a couple of deadlines, and then it  
16                  extends the third deadline that says that the filing  
17                  deadline for nondispositive motions related to fact  
18                  discovery is extended from June the 11th to July the 9th.

19                  All other motions, yes, had to be filed by August  
20                  the 6th: motion to withdraw as counsel, motion to amend  
21                  another type of order. All sorts of motions were due -- if  
22                  you wanted to have it heard at an August 20th hearing had to  
23                  be filed by the 6th of August. And that is why the Court  
24                  put out the text-only order that it did a day after August  
25                  the 6th because counsel, Mr. Kachouroff, had called

1       chambers, had asked to have a motion heard on August the  
2       20th -- had gotten a hearing date of August 20th.

3                  That meant August the 6th was the date for  
4       whatever type of motion, but for a specific subset of  
5       motions. Nondispositive motions dealing with fact  
6       discovery, the Court had ordered that the due date was July  
7       the 9th.

8                  The question is whether this -- whether  
9       Mr. Kachouroff has shown good cause, excusable neglect. The  
10      standard here winds up not being all that -- I don't want to  
11      say standards aren't important. Mr. Kachouroff thinks that  
12      he has met either standard. I disagree. I don't think that  
13      either standard has been met. And I want to expand on that  
14      a little bit because I think this is a more general problem.

15                 Mr. Lindell has so far had lawyers decline to  
16      continue representing him because he will not pay their  
17      bill. I don't know where local counsel, Mr. Wardlow and the  
18      other individual whose name I'm not remembering at the  
19      moment, are in all of this, but it does seem to me that this  
20      is exactly the sort of thing that local counsel is supposed  
21      to be helping with, and I hope that local counsel is not  
22      declining to help because they're not being paid or have  
23      been paid only so much.

24                 Another deadline has been extended, a deadline to  
25      comply with a motion to compel brought by the plaintiffs

1 because Mr. Kachouroff is working with a database that, as  
2 far as I understand from the representations he has made, he  
3 has to click through file by file by file. The blunt truth  
4 is that Mr. Lindell is not devoting resources to this case  
5 or to his legal representation. It is not on me to say that  
6 he needs to.

7 I understand that Mr. Lindell has got some  
8 financial issues. He's been fairly open about that in  
9 various forms of public media. But at the same time, I  
10 don't -- I'm not blind to the fact that as he talks about  
11 his financial issues, he is also hosting conventions  
12 concerning allegations of fraud in the 2020 presidential  
13 election. So I, again, want to go out of my way to stress  
14 that I am not blaming Mr. Kachouroff. This is not personal  
15 as to Mr. Kachouroff.

16 At the same time, this case has been going on for  
17 a long time. If Smartmatic is right -- and I say that only  
18 for purposes of the present discussion. It is not in any  
19 way intended to even so much as hint that I have decided  
20 which side is right and which side is wrong in this case,  
21 because I have not. And I have not spent any time worrying  
22 about which side is right and which side is wrong.

23 But if Smartmatic is right, then they have been  
24 defamed and they have suffered damages. And they have been  
25 waiting a long time for their day in court, and I understand

1       that in a, you know, perfect world, 30 days, 40 days,  
2       60 days doesn't really matter. But to sort of misquote or  
3       amend a quote from the late Senator Everett Dirksen, a  
4       million here, a million there, eventually you're talking  
5       about real money. 30 days here, 60 days there, eventually  
6       you're talking about real time.

7                  The Court put out at Docket Number 280 an order  
8       that was less than a page long. It takes up less than one  
9       8-and-a-half-by-11 page, and that includes the caption. And  
10      it says, nondispositive motions related to fact discovery,  
11      your due date is the 9th of July. I cannot find that  
12      because this chambers followed its usual practice of saying,  
13      hey, we were expecting a motion on August the 6th,  
14      therefore, the Court itself was confused. If -- and I think  
15      that that's all I have to say.

16                  And for these reasons, the motion for leave to  
17      file a motion to compel is respectfully denied.

18                  The motion to compel itself, which is at Docket  
19      Number 335 is ordered to be stricken, and that is -- that's  
20      all I have to say.

21                  Mr. Kachouroff, any requests for clarification of  
22      the Court's ruling?

23                  MR. KACHOUROFF: Yes, Your Honor. I was under the  
24      impression that the Court, pursuant to the last hearing, was  
25      treating this as a motion to amend the scheduling order. I

1 did not file a brand-new motion to amend the scheduling  
2 order because I did not want to confuse the issue any  
3 further.

4                   The Court has made its ruling. I respectfully  
5 disagree with the ruling. I don't make it a habit to argue  
6 with judges, but I think your order, what you've decided  
7 now, is pretty clear.

8                   What we had discussed, as I understood it, was we  
9 were going to try to change the deadlines for some of the  
10 things that were due. To the extent that the Court believes  
11 that I should have brought the fact discovery motion ahead  
12 of time, I respect that. But that still leaves on the  
13 table, in my humble opinion, the issue of these -- the  
14 compressed timeline and the dates that things are due.

15                  THE COURT: Yep. And what we talked about last  
16 time, Mr. Kachouroff, was the following: I said that I  
17 would probably grant extra time. Actually, I was more  
18 emphatic than that. I told you and Ms. Loftus, who was  
19 there for the plaintiffs at that time, to meet and confer.  
20 I told Ms. Loftus that I thought it was in Smartmatic's best  
21 interests to get out in front of this.

22                  I checked the docket. When I didn't find  
23 anything, I asked the law clerk to check the docket to make  
24 sure I hadn't missed it. No stipulation for a new schedule  
25 has yet been filed, and that is the universe in which I'm

1 operating.

2 MR. KACHOUROFF: Okay. Well, I -- just so the  
3 Court is aware, Mr. Frey did e-mail me today. We have been  
4 talking about this issue. So as long as I understand  
5 that -- this is something I don't want to waste the Court's  
6 time. If the Court is not going to entertain this in the  
7 future, I am not going to file a new motion to amend the  
8 scheduling order. But if this is something that is live  
9 that I can attempt to obtain relief for, then I will do so.  
10 I don't want to -- I understood that today's motion was  
11 really that; so if the Court -- like I said --

12 THE COURT: But, Mr. Kachouroff, how could it be  
13 that when there is no -- I mean, you had talked about the  
14 expert discovery deadlines being very close in. There's  
15 nothing here about extending that. Nothing here about  
16 dispositive motions. Nothing here about a trial-ready date.  
17 None of that stuff.

18 It's a single motion for leave to file a motion to  
19 compel. And that is all that is before me, and I couldn't  
20 possibly mistake that for a stipulation to amend the  
21 scheduling order. I've seen stipulations to amend  
22 scheduling orders. They don't look anything like this.

23 MR. KACHOUROFF: Understood. I'm just -- you --  
24 respectfully, Judge, you said you were going to treat it --  
25 you viewed it as a motion to amend the scheduling order. So

1           that's the way I approached this hearing today; was not a  
2           motion for leave to file the motion to compel, which is what  
3           I originally had filed, and I understand that. And so to  
4           the extent that I misunderstood the Court, I --

5           THE COURT: Mr. Kachouroff, your Document  
6           Number 323 is captioned Defendants' Motion for Leave to File  
7           Motion to Compel. What am I missing?

8           MR. KACHOUROFF: You told me, Your Honor, at the  
9           last hearing that you viewed that as a motion to amend the  
10          scheduling order. And I appreciated that. I did not refile  
11          or amend that motion to change the caption of the motion.  
12          So while the rules talk about the form of the motion, I took  
13          it that the Court was looking at that, really, as a motion  
14          to amend.

15           I don't want to argue with the judge. You made  
16          your decision, Your Honor. I understand it and I accept it.  
17          I'm not happy about it, but I accept it.

18           THE COURT: Mr. Bedell, any requests for  
19          clarification?

20           MR. BEDELL: No, Your Honor.

21           THE COURT: All right. Thanks all very much.  
22          Court is adjourned.

24           (Court adjourned at 2:38 p.m.)

25                                 \*          \*          \*

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3 I, Nancy J. Meyer, certify that the foregoing is a  
4 correct transcript from the record of proceedings reported  
5 by Erin D. Drost in the above-entitled matter to the best of  
6 my ability.

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Certified by: /s/ Nancy J. Meyer

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Nancy J. Meyer, RDR, CRR

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